

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

FILED

APR 16 2004

TERESA L. DEAN, CLERK
U.S. District Court
Southern District of West Virginia

MICHAEL H. HOLLAND, A. FRANK
DUNHAM, MARTY D. HUDSON, and
ELLIOT A. SEGAL as Trustees of the
UNITED MINE WORKERS OF AMERICA
1992 BENEFIT PLAN,

Plaintiffs,

v.

BANNER COAL & LAND CO.
130 Brookshire Lane
Beckley, West Virginia 25801

RUSH RUN COAL COMPANY, INC.
130 Brookshire Lane
Beckley, West Virginia 25801

SIMPKINS & ASSOCIATES, AC
130 Main Street
Suite 301
Beckley, West Virginia 25801

BUCHANAN FINANCIAL, INC.
1201 Hays Street
Tallahassee, Florida 32301

ATLANTIC MINE SUPPLY COMPANY
130 Brookshire Lane
Beckley, West Virginia 25801

Defendants.

Civil Action No. 5:04-0370

COMPLAINT

1. Plaintiffs, Michael H. Holland, A. Frank Dunham, Marty D. Hudson, and Elliot A. Segal are Trustees of the United Mine Workers of America 1992 Benefit Plan ("The 1992

Plan"). The Trustees are fiduciaries with respect to the 1992 Plan within the meaning of Section 3(21)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(21)(A). The Trustees conduct the business of the 1992 Plan at 2121 K Street, N.W., Washington, D.C. 20037.

2. The 1992 Plan is an irrevocable trust fund created pursuant to Section 9712 of the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"), 26 U.S.C. § 9712.

3. The 1992 Plan is a Plan described in Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5); an employee welfare benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3); and a multiemployer plan within the meaning of Section 3(37) of ERISA, 29 U.S.C. § 1002(37).

4. Defendant Banner Coal & Land Co. is or was a West Virginia corporation, with an office and/or address at 130 Brookshire Lane, Beckley, West Virginia 25801.

5. Defendant Rush Run Coal Company is or was a West Virginia corporation, with an office and/or address at 130 Brookshire Lane, Beckley, West Virginia 25801. On May 25, 2000, Rush Run Coal Company, Inc. merged into Banner Coal & Land Co.

6. Defendant Simpkins & Associates, AC is or was a West Virginia corporation, with an office and/or address at 130 Main Street, Suite 301, Beckley, West Virginia 25801.

7. Defendant Buchanan Financial, Inc. is or was a Florida corporation, with an office and/or address at 1201 Hays Street, Tallahassee, Florida, 32301.

8. Defendant Atlantic Mine Supply Company is or was a Florida corporation, qualified to do business in West Virginia, with an office and/or address at 130 Brookshire Lane, Beckley, West Virginia 25801.

9. Jurisdiction is conferred on this Court by Section 9721 of the Coal Act, 26 U.S.C. § 9721; Section 4301(d) of ERISA, 29 U.S.C. § 1451(d); and Section 502(e) of ERISA, 29 U.S.C. § 1132(e).

10. Venue is proper in this district under Section 9721 of the Coal Act, 26 U.S.C. § 9721; Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(c)(2); and Section 4301(d) of ERISA, 29 U.S.C. § 1451(d), in that Defendants Banner Coal & Land Co., Simpkins & Associates, AC and Atlantic Mine Supply Company are incorporated in or authorized to do business in West Virginia and are engaged in their normal business activities within this district. Defendant Buchanan Financial, Inc. is incorporated in Florida and is engaged in its normal business activities within that district.

11. Defendant Banner Coal & Land Co. is or was engaged in operating a certain coal mine, or mines, or coal mining business and/or transporting or cleaning coal.

12. Defendant Banner Coal & Land Co. is a "Last Signatory Operator" as that term is defined in Section 9701(c)(4) of the Coal Act, 26 U.S.C. § 9701(c)(4).

13. Defendants Simpkins & Associates, AC, Atlantic Mine Supply Company and Buchanan Financial, Inc. are "related persons" to Defendant Banner Coal & Land Co. within the meaning of Section 9701(c)(2)(A) of the Coal Act, 26 U.S.C.

§ 9701(c)(2)(A). As such, pursuant to Section 9712(d)(4) of the Coal Act, 26 U.S.C.

§ 9712(d)(4), Defendants Banner Coal & Land Co., Simpkins & Associates, AC, Atlantic Mine Supply Company and Buchanan Financial, Inc. are jointly and severally liable for the amounts owed to the 1992 Plan, and shall be referred to herein as Defendants.

14. Pursuant to Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), the Defendants are jointly and severally liable for the payment of monthly per beneficiary premiums for its eligible beneficiaries.

15. By letter dated December 17, 2003, the 1992 Plan notified the Defendants of the beneficiaries attributed to them and requested payment of the monthly per beneficiary premiums to be made no later than January 15, 2004. At that time, the Defendants have been attributed 14 beneficiaries.

16. Defendants have failed to pay the required premiums for months September 2003 through April 2004. Therefore, Defendants have failed to discharge their obligations under Section 515 of ERISA, 29 U.S.C. § 1145, and Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), and have caused the 1992 Plan to sustain loss of income, incur administrative and legal expenses and suffer immediate, continuing and irreparable injury. Plaintiffs are without an adequate remedy at law.

WHEREFORE, the Plaintiffs pray for the following relief:

- (a) A declaration that Defendants Banner Coal & Land Co., Simpkins & Associates, AC, Atlantic Mine Supply Company and Buchanan Financial, Inc. are related persons within the meaning of Section 9701 (c)(2)(A) of the Coal Act, 29 U.S.C. § 9701 (c)(2)(A);
- (b) A declaration that Defendants' liability to the 1992 Plan for the monthly per beneficiary premium is \$71,028.37;
- (c) Judgment for the entire liability set forth in paragraph (b), plus interest thereon from the date such amount became due and

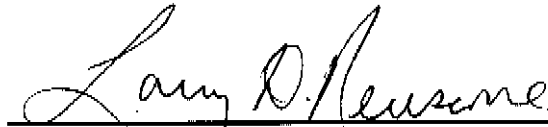
owing, together with liquidated damages, pursuant to Section 9721 of the Coal Act, 26 U.S.C. § 9721; Sections 502 (g)(2), 515, and 4301 (b) of ERISA, 29 U.S.C. §§ 1132 (g)(2), 1145 and 1451(b), and for all amounts that become due during the pendency of this action;

- (d) An order requiring Defendants to submit a completed Remittance Advice Form, reflecting their number of potential beneficiaries, and Judgment to be awarded for the additional amounts due, based on the information contained on the Remittance Advice Form;
- (e) Judgment for attorney fees, audit costs and other costs and disbursements in this action;
- (f) that the Court retain jurisdiction of this case pending compliance with its orders; and
- (g) for such other and further relief as the Court may deem just.

Respectfully submitted,

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DAVID W. ALLEN
General Counsel

A handwritten signature in cursive script, reading "Larry D. Newsome", written in black ink.

LARRY D. NEWSOME
Associate General Counsel

A handwritten signature in cursive script, reading "Christopher F. Clarke", written in black ink.

CHRISTOPHER F. CLARKE
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Attorneys for Plaintiffs

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